

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Griffin Sherbert	Team: Squad #7	CCRB Case #: 202003111	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 08/08/2019 2:30 PM	Location of Incident: in front of 50 Manhattan Avenue	Precinct: 90	18 Mo. SOL 2/8/2021	EO SOL 9/25/2021	
Date/Time CV Reported Thu, 08/15/2019 2:45 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 08/15/2019 2:45 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Kitwane Lewis	04105	951915	088 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michal Jalbrzykowski	21736	959710	090 PCT
2. POM Stephen Sheppard	13816	945001	090 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Kitwane Lewis	Abuse: Sergeant Kitwane Lewis stopped § 87(2)(b)	
B.SGT Kitwane Lewis	Abuse: Sergeant Kitwane Lewis stopped § 87(2)(b)	
C.SGT Kitwane Lewis	Abuse: Sergeant Kitwane Lewis frisked § 87(2)(b)	
D.SGT Kitwane Lewis	Abuse: Sergeant Kitwane Lewis searched the vehicle in which § 87(2)(b) was an occupant.	
E.SGT Kitwane Lewis	Abuse: Sergeant Kitwane Lewis searched the vehicle in which § 87(2)(b) was an occupant.	
F.SGT Kitwane Lewis	Abuse: Sergeant Kitwane Lewis failed to provide § 87(2)(b) with a business card.	
G.SGT Kitwane Lewis	Abuse: Sergeant Kitwane Lewis failed to provide § 87(2)(b) with a business card.	
§ 87(2)(g), § 87(4-b)		

Case Summary

On August 15, 2019, § 87(2)(b) and § 87(2)(b) were interviewed for CCRB #201907186. During their interviews, § 87(2)(b) and § 87(2)(b) provided information regarding an additional separate incident, which was split from the former and investigated under CCRB #202003111.

On August 8, 2019, at approximately 2:30 p.m., § 87(2)(b) and § 87(2)(b) were seated in their friend's vehicle, parked in front of 50 Manhattan Avenue in Brooklyn, when Sergeant Kitwane Lewis, Police Officer Michal Jalbrzykowski, and Police Officer Stephen Sheppard, of the 90th Precinct, approached and stopped them (**Allegations A and B: Abuse of Authority-Stop of Person**, § 87(2)(g)). Sgt. Lewis removed § 87(2)(b) from the vehicle and frisked him (**Allegation C: Abuse of Authority-Frisk**, § 87(2)(g)). After § 87(2)(b) was removed from the vehicle, Sgt. Lewis directed PO Jalbrzykowski to search the vehicle (**Allegations D and E: Abuse of Authority-Search of Vehicle**, § 87(2)(g)). After the vehicle search was concluded, wherein no arrests were made nor summonses issued, Sgt. Lewis and his officers returned to their RMP and drove away without providing § 87(2)(b) or § 87(2)(b) Right to Know Act ("RTKA") business cards (**Allegations F and G: Abuse of Authority-RTKA card**, § 87(2)(g)).

The investigation obtained two cell phone videos from § 87(2)(b) (BR01-BR02), and three Body-Worn Camera ("BWC") videos from the involved officers (BR03-BR05), which captured portions of both incidents.

Findings and Recommendations

Allegation A—Abuse of Authority: Sergeant Kitwane Lewis stopped § 87(2)(b)

Allegation B—Abuse of Authority: Sergeant Kitwane Lewis stopped § 87(2)(b)

Allegation C—Abuse of Authority: Sergeant Kitwane Lewis frisked § 87(2)(b)

Allegation D—Abuse of Authority: Sergeant Kitwane Lewis searched the vehicle in which § 87(2)(b) was an occupant.

Allegation E—Abuse of Authority: Sergeant Kitwane Lewis searched the vehicle in which § 87(2)(b) was an occupant.

Allegation F—Abuse of Authority: Sergeant Kitwane Lewis failed to provide § 87(2)(b) with a business card.

Allegation G—Abuse of Authority: Sergeant Kitwane Lewis failed to provide § 87(2)(b) with a business card.

On August 8, 2019, at approximately 2:30 p.m., § 87(2)(b) (BR06) and § 87(2)(b) (BR07) were seated in a white sedan, double-parked in front of 50 Manhattan Avenue in Brooklyn, while the driver, known only as Anthony, went into the above location. A few minutes later, Sgt. Lewis, PO Sheppard, and PO Jalbrzykowski approached the vehicle on foot.

Sgt. Lewis (BR08) ordered § 87(2)(b) to exit the vehicle because it was "double-parked, and smelled like weed." § 87(2)(b) complied. During their interviews, § 87(2)(b) (BR06) and § 87(2)(b) (BR07) each denied that the vehicle smelled like marijuana, and denied that they or any other occupant had smoked marijuana in the vehicle. Sgt. Lewis (BR08) testified that he smelled the odor of marijuana emanating from the vehicle "right away," and observed what he believed to be marijuana "flakes and seeds" within the vehicle. Sgt. Lewis was unable to describe whether the odor he detected was raw or burnt marijuana, but repeated that he "smelled it, right away."

Sgt. Lewis (BR08) frisked § 87(2)(b) to "make sure" he did not have any weapons on him, which § 87(2)(b) recorded with her cell phone (BR01), and then escorted § 87(2)(b) to the rear of the vehicle. § 87(2)(b)'s video concludes with PO Sheppard and PO Jalbrzykowski asking her to exit. § 87(2)(b) (BR07) and § 87(2)(b) (BR06) stood at the back of the vehicle facing Sgt. Lewis, while PO Jalbrzykowski searched the passenger compartment of the vehicle.

After a few minutes, PO Jalbrzykowski concluded the search, where neither marijuana nor

other contraband was recovered. Sgt. Lewis ordered § 87(2)(b) and § 87(2)(b) to reenter, and § 87(2)(b) recorded a second short cell phone video (BR02), which shows her and § 87(2)(b) back inside of the vehicle, and Sgt. Lewis standing outside. After § 87(2)(b) the officers, and unseen bystanders exchange comments on the circumstances of the stop for several seconds, the video concludes. A few minutes later, Sgt. Lewis, PO Jalbrzykowski, and PO Sheppard walked back to their RMP and drove away. § 87(2)(b) and § 87(2)(b) were neither arrested, issued any summons, nor given a Right to Know Act (“RTKA”) card at the conclusion of the interaction.

The investigation obtained three BWC videos from Sgt. Lewis, PO Jalbrzykowski, and PO Sheppard (BR03-BR05). Sgt. Lewis’ (BR03) and PO Jalbrzykowski’s (BR04) BWC footage captures the most relevant portions of the vehicle stop, as described below.

At the 30-second mark of his BWC (BR03) video, Sgt. Lewis approaches the passenger side of the white sedan, double-parked on the right-hand side of the street. Sgt. Lewis leans toward the open front passenger window as § 87(2)(b) speaks to PO Jalbrzykowski on the driver side, and at the 45-second mark, Sgt. Lewis asks § 87(2)(b) to step out of the vehicle. While exiting, § 87(2)(b) asks why, and Sgt. Lewis says because the vehicle is “double-parked, idling, and the car smells like weed.” As Sgt. Lewis orders § 87(2)(b) to place his hands on the roof of the vehicle, Anthony, seen standing near the front of the vehicle filming with his cell phone, remarks that “[Sgt. Lewis] always saying that the car smells like weed.” Sgt. Lewis asks him to back up, says that as he was not in the vehicle and not involved, and Anthony replies that it is his vehicle.

Sgt. Lewis briefly frisks § 87(2)(b) escorts him to the rear of the vehicle, and soon after § 87(2)(b) is seen standing next to § 87(2)(b). While PO Jalbrzykowski searches the passenger compartment of the vehicle, § 87(2)(b) tells Sgt. Lewis that “once again, [the officers] are fucking” with him. Sgt. Lewis begins to remark about “the car—” but § 87(2)(b) interjects, and asks louder, “Y’all just going to keep fucking with me every time y’all see me?” At the 2:30 minute mark, § 87(2)(b) loudly asks Sgt. Lewis, “What the fuck y’all want?” Sgt. Lewis remarks that “it was calm, now § 87(2)(b) is] putting on a show.”

At the 3:00 minute mark, PO Jalbrzykowski is seen in the background walking to the passenger side of the vehicle, and entering the front passenger side door. § 87(2)(b) continues to express his frustration about being repeatedly stopped. At the 4:00 minute mark, PO Jalbrzykowski concludes the search, and § 87(2)(b) walks over followed by Sgt. Lewis who tells him to reenter. § 87(2)(b) refuses, says he is going to put on his shoes and stand back up. Sgt. Lewis tells him to remain in the car so he and the other officers can complete the vehicle stop. Although § 87(2)(b) is heard repeatedly telling Sgt. Lewis “don’t touch me,” the BWC footage (BR03) does not capture any physical contact between them. After § 87(2)(b) says, “don’t touch me again, or there’s going to be a problem,” Sgt. Lewis closes the passenger door.

At the 4:30 minute mark, several unseen individuals are heard making remarks at the officers regarding the “illegality” of the stop, and at the 5:15 minute mark, Sgt. Lewis looks toward a few individuals standing near the curb, tells an unseen individual to “move the car, alright,” and walks away as the video ends.

At the 1:25 minute mark of PO Jalbrzykowski’s BWC (BR04) video, after § 87(2)(b) has exited, he opens the rear passenger door, and PO Sheppard asks § 87(2)(b) to exit. § 87(2)(b) complies, and PO Jalbrzykowski asks § 87(2)(b) to remove the small purse she is wearing, which she gives to him and walks to the back. PO Jalbrzykowski briefly searches within the purse on the rear passenger seat of the vehicle.

At the 2:00 minute mark, PO Jalbrzykowski begins searching the vehicle, starting at front driver side, then the front passenger side, and then searches the rear passenger seat, including a black leather backpack present on the seat. At the 3:45 minute mark, PO Jalbrzykowski completes the search of the vehicle, and motions Sgt. Lewis and § 87(2)(b) to come over. After § 87(2)(b) shouts “don’t touch me,” PO Jalbrzykowski walks around the front of the vehicle, then walks to the rear, opens the unlocked trunk of the vehicle, and briefly searches inside including

unzipping two duffel bags therein. After not recovering any contraband, PO Jalbrzykowski tells Sgt. Lewis “we’re good,” and the video ends.

During his interview, Sgt. Lewis (BR08) acknowledged that he did not provide § 87(2)(b) or § 87(2)(b) with a Right to Know Act (“RTKA”) business card as required by the Patrol Guide. Sgt. Lewis explained that he did not provide an RTKA card because after the vehicle search concluded, § 87(2)(b) became aggressive, and yelled “don’t touch me,” which caused Sgt. Lewis concern the situation might escalate. Sgt. Lewis also added that throughout the course of the vehicle stop, the building at the incident location “emptied out with blood gang members,” that he claimed § 87(2)(b) was affiliated with, who gathered around the vehicle and the officers. Sgt. Lewis stated that “safest thing to do,” out of concern that the situation was “getting dangerous,” was to leave the scene without further engaging § 87(2)(b).

Except when necessary to avoid conflict with other traffic, or when in compliance with law or the directions of a police officer or official traffic-control device, no person shall stop, stand or park a vehicle on the roadway side of any vehicle stopped, standing or parked at the edge or curb of a street. NYS VTL §1202 (BR09).

In People v. Chesnut, the court held that “the smell of marihuana smoke, with nothing more, can be sufficient to provide police officers with probable cause to search an automobile and its occupants.” People v. Chestnut, 43 A.D.2d 260 (App. Div. 3rd Dept. 1974) (BR10).

In People v. Norman, the court determined that probable cause existed for the warrantless search of the defendant's vehicle, based on an officer's detection of the odor of burnt marihuana emanating from the defendant's parked vehicle (*see People v McLaren*, 131 AD3d 548, 549, 14 NYS3d 504 [2015]; *People v John*, 119 AD3d 709, 710, 988 NYS2d 885 [2014]; *People v Cuffie*, 109 AD3d 1200, 1201, 972 NYS2d 383 [2013]; *People v Robinson*, 103 AD3d 421, 959 NYS2d 188 [2013]; *People v Chestnut*, 43 AD2d 260, 351 NYS2d 26 [1974], *affd* 36 NY2d 971, 335 NE2d 865, 373 NYS2d 564 [1975]). People v. Norman, 142 A.D.3d 1107 (App. Div. 2nd Dept. 2016) (BR11).

Officers are required to offer a business card at the conclusion of the following law enforcement activities, except in cases when a summons is issued or an arrest is made, as follows: noncustodial questioning of individuals suspected of criminal activity; a stop where an officer has an individualized, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime and where a reasonable person would not feel free to end the encounter; frisk; and/or a search of persons or property, including vehicles. [...] Explain reason for law enforcement activities, unless providing this information would impair a criminal investigation, or exigent circumstances are present (i.e., physical resistance, flight, imminent danger of physical injury or damage to property, or other factors make such procedure impractical). Patrol Guide, Procedure 203-09 § (a)(b)(c)(d)(3) (BR12).

It is undisputed that § 87(2)(b) and § 87(2)(b) were seated in their friend’s vehicle, and that the vehicle was double-parked. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

As seen on his BWC footage, upon approaching the vehicle, Sgt. Lewis remarked about detecting the odor of marijuana emanating from the vehicle and informed § 87(2)(b) of such. During his interview, Sgt. Lewis affirmed that he smelled the odor of marijuana “right away” after approaching the vehicle, and believed that he observed “flakes and seeds” of marijuana present therein, but was unable to specify whether he detected the odor of fresh or burnt marijuana. Contrapuntally, § 87(2)(b) and § 87(2)(b) each denied that they had smoked marijuana in the vehicle, denied that the vehicle smelled of marijuana, and all parties testified that no marijuana was recovered from the vehicle or its occupants. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- § 87(2)(b)
 - [REDACTED]
 - [REDACTED]
- § 87(2)(b)
 - [REDACTED]
 - [REDACTED]
- Sgt. Lewis, an eight-year-member-of-service, has had (11) prior CCRB complaints filed against him, with a total of 29 allegations, (1) of which has been substantiated (see Officer History).
 - In CCRB #201901804, failure to provide RTKA card allegation was substantiated against Sgt. Lewis, the CCRB recommended Command Discipline A, which is pending NYPD review and disposition.

- This case was not suitable for mediation.
- On May 5, 2020, a FOIL request was sent to the NYC Comptroller's Office to determine whether § 87(2)(b) or § 87(2)(b) has filed a Notice of Claim in regard to this incident, the results of which will be added to the case file upon receipt (BR14).
- § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
- According to the Office of Court Administration database, § 87(2)(b) has not been criminally convicted in NYC (BR16).

Investigator:	<u>Griffin Sherbert</u> Signature	<u>Inv. Griffin Sherbert</u> Print Title & Name	<u>05/20/2020</u> Date
Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date